

**ASSESSORS' HANDBOOK SECTION 410, ASSESSMENT OF NEWLY CONSTRUCTED PROPERTY
ALTERNATIVE LANGUAGE**

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
1	1	20	SBE Staff	<p>Add footnote: • A property's base year value is adjusted each year to reflect inflation as measured by the California Consumer Price Index. An upward adjustment cannot exceed 2 percent per year. In general, these adjustments continue until the property changes ownership or undergoes new construction. The value that reflects the annual inflation indexing is known as the <i>adjusted</i> or <i>factored base year value</i>. Each year, the adjusted base year value is the maximum assessable amount for the property for that year.⁴</p> <p>⁴ <u>In many examples throughout this text, the inflation adjustment is applied to a base year value going back more than one year. In these examples, we use a compounded factor to calculate the adjusted base year value in one step rather than showing the adjustment for each year. See Letter To Assessors 2011/056 for factors through the 2011-12 fiscal year [www.boe.ca.gov/proptaxes/pdf/lta11056.pdf].</u></p>	Accepted
2	--	--	Marin County Assessor (R. Benson)	General Comments: See Attachment A	See Attachment B
3	--	--	Cal Tax (Doerr)	General Comments: See Attachment C	See Attachment D
4	3	17	Marin County Assessor (R. Benson)	<p>Comment: RTC 70(2)(b) defines a "major rehabilitation" of an improvement or fixture as "any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture." AB 1488 of 1979 created the language for this statute thus defining "major rehabilitation." The June 28, 1979 legislative history and analysis of this bill, as delivered to the Governor for signature, specifically expressed the intent of the framers by stating "AB 1488 defines the term 'new construction' and specifies what would constitute <u>major rehabilitation</u> for purposes of evaluating an improvement. Only those portions <u>which exceed the equivalent value</u> construction would be reassessed," (<i>emphasis added</i>). It is important to note that the legislative intent and focus of the "substantial equivalent test" related specifically to a value test.</p>	See Attachment B
5	3	31	Cal Tax (Doerr)	<p>Revise sentence: • Any physical alteration that converts an improvement (or any portion of it) to the substantial equivalent of a new improvement or changes the way in which the improvement is used.</p>	<p>Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D</p>

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
6	4	29	Cal Tax (Doerr)	Revise sentence: 1. Rehabilitates real property (or a portion of it) to the point that it is like new; or	Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D
7	4	29	Marin County Assessor (R. Benson)	Comment: It's confusing to use the term "rehabilitate" to describe when an alteration becomes new construction. An alteration modifies or changes while rehabilitation restores to a prior condition.	Language is consistent with R&T Code section 70 and Rule 463. "Any alteration of land or of any improvement, including fixtures, since the last lien date that constitutes a major rehabilitation thereof or that converts the property to a different use."
8	4	30	Cal Tax (Doerr)	Revise sentence: 2. Converts the property (or a portion of it) to a different use.	Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
9	4 5	26-30 1-16	Sacramento County Assessor's Office (Lewis, et al.)	<p>Suggestion: Please add further material from BOE AH 502 to AH 410 discussion of Alteration in order to clarify the relationships between alteration, change in use, and assessable new construction and provide more examples. The suggested language indicated in underline below is taken primarily from AH 502. Thanks for your consideration!</p> <p>ALTERATION An <i>alteration</i> is the act or process of altering; a modification or change. An alteration qualifies as new construction when it:</p> <ol style="list-style-type: none"> 1. Rehabilitates real property (or a portion of it) to the point that it is like new; or 2. Converts the property (or a portion of it) to a different use. <p>The value added by the physical alteration is assessable; however, the value attributable <u>solely</u> to the change in use is not.⁽⁷⁾</p> <p>The appraiser's task is to estimate the value added by the alteration.</p> <p>Examples of <u>assessable alterations</u> include <u>but are not limited to</u> installation of:</p> <p style="padding-left: 40px;">Air conditioning added to an existing forced air heating system</p> <p style="padding-left: 40px;">A new fixture-structure item, such as a service station sign</p> <p style="padding-left: 40px;"><u>Remodeling of an existing store to a restaurant (footnote cite to Annotation 610.0008)</u></p> <p><u>Examples of physical alterations to land that lead to a change in use and qualify as new construction include but are not limited to:</u></p> <p style="padding-left: 40px;"><u>Leveling dry farm land for use as irrigated row cropland</u></p> <p style="padding-left: 40px;"><u>Laying gravel on a vacant lot for use as RV storage</u></p> <p><u>One example of an alteration that does not lead to a change in use but does qualify as assessable new construction would be a change from a peach orchard to a prune orchard. This is because one improvement is removed (peach trees) and another improvement substantially equivalent to new (prune-plum trees) is added.</u></p>	Accepted See also Items #10, 11, 12, 13, 14, & 35
10	5	1	Sacramento County Assessor's Office (Lewis, et al.)	<p>Revise sentence: The value added by the physical alteration is assessable; however, the value attributable <u>solely</u> to the change in use is not.⁸</p>	Accepted
11	5	2	Los Angeles County Assessor's Office (Hough)	<p>Revise footnote: The value added by the physical alteration is assessable; however, the value attributable to the change in use is not.⁸</p> <p>⁸ Rule 463(b)(2),(3)</p>	Not accepted See Item #12

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12	5	2 Fn 8	Sacramento County Assessor's Office (Lewis, et al.)	<p>Suggestion: Please omit footnote [7] 8 reference to Property Tax Rule 463(b)(2). We believe this citation is confusing as the sentence it is attached to does not seem to come from the Property Tax Rule 463(b)(2), or at least we don't understand the Rule to exactly say that.</p> <p>Comment: A nearly identical sentence to the one at the top of Page 5 footnoted "7" does, however, appear in BOE AH 502 on Page 115 in the first paragraph under Change In Use but includes the word "solely" as indicated in the alternative language suggested for Page 5, Lines 1-5 above. In our opinion, the discussion in AH 502 pages 115 and 116, and the two Annotations under Newly Constructed Property that discuss Change In Use (610.0008 and 610.0009) better capture and explain the meaning of Rule 463 overall. Perhaps those could be cited here as resources instead.</p> <p>SBE REWRITE: The value added by the physical alteration is assessable; however, the value attributable solely to the change in use is not.⁸</p> <p>⁸Rule 463(b)(2).</p>	<p>Accepted—See SBE Rewrite</p> <p>See also items 10, 11, 13, & 14.</p>
13	5	4	Los Angeles County Assessor's Office (Hough)	<p>Revise bullets: • Air conditioning added to an existing forced air heating system. • A new fixture structure item, such as a service station sign <u>• Conversion of a residential garage to living area.</u> <u>• Site development of rural land for the purpose of establishing a residential subdivision.</u></p>	<p>Accepted</p> <p>See also item 35</p>
14	5	4	Cal Tax (Doerr)	<p>Delete sentence: • Air conditioning added to an existing forced air heating system.</p> <p>Comment: Not new construction unless it is a separate "fixture: appraisal unit."</p>	<p>Accepted</p> <p>See Item #13</p>
15	5	20	Marin County Assessor (R. Benson)	<p>Comment: "Normal maintenance keeps a property in condition to perform efficiently the service for which it is intended and ensures that a property will experience an economic life of typical duration." See comments pg. [82] 88 definition.</p> <p>SBE Rewrite: Normal maintenance keeps a property in condition to perform efficiently the service for which it is intended and ensures that a property will experience an economic life of typical duration.</p>	<p>Accepted—See SBE rewrite</p> <p>See also Item #97</p>
16	5	27	Marin County Assessor (R. Benson)	<p>Comment: It is ambiguous to use the word "maintenance" when defining "normal maintenance."</p> <p>SBE Rewrite: • Routine painting and maintenance</p>	<p>Accepted—See SBE rewrite</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
17	5	29	Marin County Assessor (R. Benson)	Comment: It would be helpful to show an example where the structure had been allowed to deteriorate to a point where its condition was substantially below average due to lack of normal maintenance and repair. Then the property sold in disrepair with the purchaser having full knowledge of the condition which resulted in the purchase price being discounted. The rehabilitation of the structure by the new owner to cure all of the physical deterioration would be considered new construction (abnormal maintenance). See rationale and logic of Example 6-3 and page [25] 72, lines [3-8] 18-22.	No suggested language provided. New construction to cure physical deterioration may or may not constitute reassessable new construction. It must be determined on a case-by-case basis. The example on page 72 deals with property sold in a contaminated condition. It is not analogous to a property suffering from physical deterioration.
18	6	1	Marin County Assessor (R. Benson)	Comment: It would be helpful to include an example of when "...remodeling may constitute new construction."	No suggested language provided. An example would not add to the clarity of the text and could lead to misconceptions. Decisions must be made on a case-by-case basis, and an example could lead the reader to assume an absolute when it does not exist.
19	6	10	Cal Tax (Doerr)	Revise sentence: Modernization normally involves replacing part of a structure or fixture with modern replacements of the same kind.	Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
20	6	14	Marin County Assessor (R. Benson)	Comment: It would be helpful to include an example of when "...modernization qualifies as new construction."	No suggested language provided. An example would not add to the clarity of the text and could lead to misconceptions. Decisions must be made on a case-by-case basis, and an example could lead the reader to assume an absolute when it does not exist.
21	6	18	SBE Staff	Revise paragraph: For example, if a structure has been allowed to deteriorate to a point that it is nearly uninhabitable due to lack of normal maintenance and repair, the rehabilitation of that structure to cure all of the physical deterioration would <u>may</u> be considered new construction. <u>Whether or not new construction activity transforms an improvement (or a portion) into a state that is substantially equivalent to new is a factual determination that must be made on a case-by-case basis.</u>	Accepted
22	6	28	Marin County Assessor (R. Benson)	Revise sentence: However, when replacements are as extensive and extreme as to make an improvement <u>(or a portion)</u> <i>like new</i> , then the work is considered new construction.	Accepted
23	6	32	Marin County Assessor (R. Benson)	Revise sentence: Thus, in a literal sense, the renovation of an improvement <u>(or a portion)</u> means the improvement has been made substantially equivalent to new and is considered new construction.	Accepted
24	6	35	Cal Tax (Doerr)	Revise sentence: New construction is assessable when that new construction has converted a fixture or any other improvement (or a portion) to a state <i>substantially equivalent to new</i> . ⁹	Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D
25	6	35	Marin County Assessor (R. Benson)	Revise sentence: New construction is assessable when that new construction has converted a fixture or any other improvement (or a portion) to a state <u>value</u> <i>substantially equivalent to new</i> . ⁹ Comment: This suggested language is consistent with the legislative intent explained in item #2 above.	Not accepted— See Attachment B

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26	7	1	Marin County Assessor (R. Benson)	<p>Revise paragraph: The restoration is such that <u>the value of the house has been converted into a state</u> is substantially equivalent of a new improvement or a value <u>substantially</u> comparable to that of a new house. <u>Establishing guidelines for determining when a value is substantially equivalent to new require both appraisal judgment and evaluation on a case-by-case basis, however, as a general guideline a value that is substantially equivalent to new is one which is at least 80% of the value of a comparable new improvement or a portion thereof.</u> The value added by such a conversion would be assessable as new construction, and the value of the removed property must be subtracted from the property's existing base year value.</p> <p>Comment: This suggested language is consistent with the legislative intent explained in item #2 above.</p>	Not accepted— See Attachment B
27	7	7	Marin County Assessor (R. Benson)	<p>Revise sentence: Whether or not new construction transforms an improvement or fixture (or a portion) into a <u>state value</u> that is substantially equivalent to new (<u>or</u> into a state where its utility is comparable to new) is a factual determination that must be made on a case-by-case basis.</p> <p>This suggested language is consistent with the legislative intent explained in item #1 above.</p>	Not accepted— See Attachment B
28	7	10	Sacramento County Assessor's Office (Lewis, et al.)	<p>Add new paragraph: <u>For example, landlord and leasehold (tenant) improvements, both structure items and fixtures, are frequently renovated, rehabilitated, or modernized. This is often done in order to provide an interior or exterior "facelift" for the space. Existing improvements may be removed and new improvements added, even before the useful life of the existing improvements is over. If such construction activity converts the existing improvements to substantially equivalent to new or is the installation of a new fixture, such activity is assessable new construction to the building (or portion thereof).</u></p>	Accepted
29	7	23	Cal Tax (Doerr)	<p>Revise sentence: • Value added – does the new construction cause the existing structure (or portion) to equal a substantial percentage of the value of a comparable new structure (or portion)?</p>	Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D

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30	7	23	Marin County Assessor (R. Benson)	<p>Revise sentence: • Value added – does the new construction cause the existing structure (or portion) to equal a substantial percentage of the value of a comparable new structure <u>improvement</u> (or portion)? <u>Establishing guidelines for determining when a value is substantially equivalent to new require both appraisal judgment and evaluation on a case-by-case basis, however, as a general guideline a value that is substantially equivalent to new is one which is at least 80% of the value of a comparable new improvement or portion thereof.</u></p> <p>Comment: This suggested language recognizes the content of this bullet point that the value test does not have to be 100% of a comparable improvement but rather something less than 100%, i.e., a substantial percentage (ex.: 80%) of the value of a comparable new improvement (or portion thereof).</p> <p>Revise sentence: Has the new construction caused the value of the existing structure <u>improvement</u> to increase by a substantial amount? <u>As a general guideline, a minor rehabilitation, modernization, renovation or alteration would not increase the value of an existing improvement by a substantial amount.</u></p> <p>Comment: It should be clarified in this bullet point that "existing structure (or portion)" clearly refers to the portion of an individual structure, not a separate structure on the same parcel.</p>	Not accepted— See Attachment B
31	7	27	Marin County Assessor (R. Benson)	<p>Revise sentence: This measurement requires an appraisal of the improvement immediately before and after the new construction to estimate the value added, along with an estimate of the value of a comparable new improvement to determine if the <u>value of the improvement after new construction is equal to a substantial portion of the property</u>. substantially equivalent to the value of a comparable new improvement. <u>Accordingly, an analogous value test may be made to an improvement or a portion thereof.</u></p>	Not accepted— See Attachment B
32	8	3	Cal Tax (Doerr)	<p>Delete sentence: It is possible, however, that if enough components are altered or replaced in a relatively short amount of time, and these replacements substantially increase the value of the property, then major rehabilitation may have occurred and should be appraised.</p> <p>Comment: The replacement must make the entire improvement the substantial equivalent of a new structure.</p>	Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D
33	8	8	Cal Tax (Doerr)	<p>Revise sentence: Physical alterations that lead to a change in the way property is used <u>the property to a different use</u> qualify as new construction.¹⁰</p>	Accepted See Item 34
34	8	Fn 10	Los Angeles County Assessor's Office (Hough)	<p>Revise footnote: Physical alterations that lead to a change in the way property is used qualify as new construction.¹⁰</p> <p>¹⁰ Section 70(a)(2); Rule 463(b)(2),<u>(3)</u>.</p>	Accepted See Item 33

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35	8	12	Sacramento County Assessor's Office (Lewis, et al.)	<p>Add paragraphs: ...discussion of this issue.)</p> <p><u>There are five basic use types: agricultural, residential, commercial, industrial, and recreational. Any physical alteration of land or improvements that changes the property from one of these use types to another would qualify as new construction.</u></p> <p><u>Within each general use type there are sub-uses. Any physical alteration that changes the property from one sub-use to another also qualifies as new construction, as indicated in the examples in Rule 463 (b)(2). Thus, leveling dry farmland for use as irrigated row cropland, or laying gravel on a vacant lot for use as recreational vehicle storage, would both qualify as new construction. An alteration that does not lead to a change in use may nevertheless qualify as new construction. For example, a change from a peach orchard to a prune orchard would result in new construction not because of the change in use, but because one improvement is removed and another improvement, substantially equivalent to new, is added. Additionally, even an alteration that does qualify as a change in use will not cause reappraisal unless there is a substantial physical alteration leading to that change. When that occurs, only the additional value created by the new construction that facilitates the change in use may be assessed.</u></p> <p><u>The following table lists general use types and sub-uses within each of the five basic classifications. It is not intended as an all-inclusive list, but rather as an illustration. For example, a change from apartment to condominium would not require reappraisal unless there were physical alterations necessary for the conversion. Even with a physical alteration, only the newly constructed portions of the conversion would be subject to reappraisal.</u></p> <table><tr><th>Use Type</th><th colspan="2">Sub-Uses</th></tr><tr><td>Agricultural</td><td><ul style="list-style-type: none">Undeveloped LandDry FarmOrchards and GrovesKiwisJojoba Beans</td><td><ul style="list-style-type: none">Irrigated Row and Field CropsGrapevinesAsparagusBush Berries</td></tr><tr><td>Residential</td><td><ul style="list-style-type: none">Single-FamilyMulti-Family</td><td><ul style="list-style-type: none">CondominiumTime Share</td></tr><tr><td>Industrial</td><td><ul style="list-style-type: none">Mining or ExtractionManufacturing</td><td><ul style="list-style-type: none">ProcessingWarehouse</td></tr><tr><td>Commercial</td><td><ul style="list-style-type: none">Office BuildingsFinancial BuildingsRetail StoresProfessional Buildings</td><td><ul style="list-style-type: none">Cocktail LoungesFood SalesAutomotive SalesService and Repair Shops</td></tr></table>	Use Type	Sub-Uses		Agricultural	<ul style="list-style-type: none">Undeveloped LandDry FarmOrchards and GrovesKiwisJojoba Beans	<ul style="list-style-type: none">Irrigated Row and Field CropsGrapevinesAsparagusBush Berries	Residential	<ul style="list-style-type: none">Single-FamilyMulti-Family	<ul style="list-style-type: none">CondominiumTime Share	Industrial	<ul style="list-style-type: none">Mining or ExtractionManufacturing	<ul style="list-style-type: none">ProcessingWarehouse	Commercial	<ul style="list-style-type: none">Office BuildingsFinancial BuildingsRetail StoresProfessional Buildings	<ul style="list-style-type: none">Cocktail LoungesFood SalesAutomotive SalesService and Repair Shops	Accepted
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35 Cont				<ul style="list-style-type: none"> Food Services 		
				Recreational <ul style="list-style-type: none"> Courts Clubhouses Ranges Tracks Swimming Pools Rinks Fields 		
36	9	4	Marin County Assessor (R. Benson)	Revise sentence: The value of the alteration, not necessarily its cost, will be added to the factored based <u>base</u> year value of the pre-existing structure.		Accepted
37	9	6	Marin County Assessor (R. Benson)	Revise sentence: In the context of newly constructed property, the term <i>portion</i> or <i>portion thereof</i> means a component of a land parcel, an individual structure, or fixture that is easily recognized. It is a part of an individual structure designed for independent, separate use <u>such as a bathroom or kitchen</u> .		Accepted
38	9	6	Cal Tax (Doerr)	Comment: Text is entirely wrong. The correct test is the plain language of Section 70(b) that requires the change must make the improvement, not just "portion thereof" the substantial equivalent of new.		Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D
39	10	26	Cal Tax (Doerr)	Delete sentence: Physical alterations that lead to a change from one sub-use to another also qualify as new construction.		Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D
40	11	4	Marin County Assessor (R. Benson)	Comment: All examples of change in use relate to land. It would be helpful to include a few examples that relate to improvements. SBE Rewrite: <ul style="list-style-type: none"> <u>Converting a single-family residence into a duplex.</u> <u>Converting a garage into living area.</u> 		Accepted—See SBE Rewrite
41	11	6	Cal Tax (Doerr)	Delete paragraph: An alteration that does not lead to a change in use may nevertheless qualify as new construction. For example, a change from a peach orchard to a prune orchard would result in new construction, not because of the change in use, but because one improvement is removed and another improvement (substantially equivalent to new) is added.		Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D

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42	12	Table 2-2	Los Angeles County Assessor's Office (Hough)	Revise examples in Table 2-2: <ul style="list-style-type: none"> Retaining walls <u>that when constructed enhance a parcel's usability or increase its buildable footprint</u> <u>Piles and caissons</u> 	Not accepted Accepted Rule 463(b)(1) includes retaining walls without any limitations
43	12	Table 2-2	Cal Tax (Doerr)	Delete examples from Table 2-2: <ul style="list-style-type: none"> Completing previously unfinished improvement areas such as basements, attics, and garages Incorporating additional improvements such as new interior partitions, walls, ceilings, lighting, restrooms, doors, floor coverings, windows, and wall coverings. Ripping, tilling, leaching, or adding soil amendments to improve the productive capability of agricultural land 	Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D
44	12	Table 2-2	Marin County Assessor (R. Benson)	Comments: Table 2-2 COMMON TYPES OF NEW CONSTRUCTION. It would be helpful to include examples of remodeling, major rehabilitation, modernization, renovation and alterations that are considered to be new construction. Bullet number 6 includes as new construction "Off-site infrastructure improvements such as utilities and sewers." This is in conflict with page [23] 25, line [19-20] 23-24 which states that "Most off-site improvements are not assessable new construction." SBE Rewrite: Off-site infrastructure improvements such as utilities and sewers ¹³ ¹³ Off-site improvements may reflect nonassessable enhancements of land rather than assessable new construction. See discussions in Chapter 3, "New Construction of Off Site Improvements" and Chapter 7, "Impact Fees, Development Fees, and Off-Site Improvements."	No suggested language provided for an example. See SBE Rewrite
45	19	18	Los Angeles County Assessor's Office (Hough)	Revise sentence: By subtracting the land value from the selling prices of comparable properties, an appraiser can estimate <u>the value attributable to each square foot of improvement area, the improvement value, and then derive the value per square foot of improvement area.</u>	Accepted

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
46	20	9	Marin County Assessor (R. Benson)	<p>Comments: Explain why the comparative sales approach may be invalidated because it may include value attributable to nonassessable new construction such as normal maintenance. If the appraiser makes appropriate adjustments for differences in condition between the subject and the comparable sale, there will be no inclusion of value attributable to differences in whether one property is normally maintained or not!</p> <p>SBE Rewrite: Two elements <u>Aspects</u> of the comparative sales approach may affect its validity <u>that should be considered</u> when appraising new construction <u>include:</u></p>	Accepted—See SBE Rewrite
47	20	16	Marin County Assessor (R. Benson)	<p>Comments: This implies that maintenance items done in conjunction with a major rehabilitation are not considered new construction. This is in conflict with the discussion of timing on page 7 that clearly points out that normal repairs, renovations and modernization CAN become items of major rehabilitation when accomplished at the same time. It is also in conflict with page [25] 27, lines 3-5 which state that "... but in combination or collectively they may constitute major rehabilitation, renovation or modernization and may convert a structure into substantially equivalent to new."</p> <p>Explain why curing functional obsolescence may invalidate the comparative sales approach! In the discussion of Modernization of page 6, it states that "For property tax purposes, modernization implies curing functional obsolescence and physical deterioration to the degree that the structure or fixture is substantially equivalent to new. When this is achieved, modernization qualifies as new construction."</p> <p>SBE Rewrite: These are increments of value that, <u>in most cases</u>, should not be included in the assessment of new construction.</p>	Accepted—See SBE Rewrite
48	23	8	Marin County Assessor (R. Benson)	<p>Comment: It's not clear if the comparable property referred to is vacant or improved.</p> <p>SBE Rewrite: Comparable <u>vacant</u> properties were selling for \$500,000.</p>	Accepted—See SBE rewrite
49	23	15	Napa County Assessor's Office (Zia) Mono County Assessor's Office (Lyon) Alameda County Assessor's Office (Grice) Los Angeles County Assessor's Office (Hough) Marin County Assessor (Benson)	<p>Correct typos in Example 3-3:</p> <p>Less 2004 <u>2010</u> market value of land without new construction</p> <p>2004 <u>2010</u> assessed value of land</p> <p>Total assessed value after completion of new construction</p> <p>Land \$57,245 <u>\$58,995</u></p>	Accepted

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50	24	13	Marin County Assessor (R. Benson)	Revise sentence: The assessed value of the land and home <u>for 2011</u> would be calculated as follows: Comment: If the home was built in 2010 it will first be assessed for 2011.	Not accepted— Construction completed in May 2010 would be added to and assessed on the supplemental assessment roll in 2010. The 2011 lien date value would be the <u>factored</u> base year value.
51	24	34	SBE Staff	Add sentence: The value to be enrolled is \$900,000, which consists of the pre-existing base year value of \$800,000, plus the value of the new construction to the land (contouring) of \$100,000. <u>The owner's cost was determined to be the current market value of the new construction.</u>	Accepted
52	25	12	SBE Staff	Add sentence: The installation of the sewer pipes and connection to the city sewer system is assessable new construction. The \$20,000 attributable to the new construction should be added to the factored base year value of the land. <u>The owner's cost was determined to be the current market value of the new construction.</u>	Accepted
53	26	Table 3-1	Cal Tax (Doerr)	Comments: Table 3-1. There are a number of activities listed as new construction that do not meet the definition of new construction under Section 70(a) and (b). The installation of new items, other than separately assessable fixtures should not be on the list and no functional or obsolescence items unless they make the property the substantial equivalent of new. Kitchen remodeling is not new construction and neither is converting a garage into a living room, or upgrading electrical service. Adding a pitched roof to a flat roof is not new construction. Converting a warehouse to a restaurant would qualify as a different use as would convert a single residential to a duplex.	Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D
54	26	Table 3-1	Sacramento County Assessor's Office (Lewis, et al.)	Revise sentence in Table 3-1: Substantial kitchen remodel and alteration such as adding built-in appliance <u>built-in appliances</u> where none existed prior, extending countertops, adding new cabinets, and adding or removing part of walls	Accepted

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
55	26	Table 3-1	Los Angeles County Assessor's Office (Hough)	<p>Delete example in Table 3-1:</p> <p>Curing functional obsolescence associated with a reduction in base year value (Proposition 8) due to circumstances out of the owner's control, such as</p> <ul style="list-style-type: none"> • Fires • Floods • Mudslides • Earthquakes • Toxic Contamination <p>Comment: Although the assessor will remove the Prop 8 and restore the trended base year value once the repairs and restoration are complete, this is not a separately assessable new construction event. See R&T Code Section 170(h)(3).</p>	Accepted
56	27	6	Marin County Assessor (R. Benson)	<p>Comment: This last sentence needs clarification or elaboration, i.e., if the assessor allocates a low improvement value to the roll, that is a strong indicator that the structure is in need of rehabilitation, which upon completion, would require the assessor to increase the improvement value to reflect the new construction.</p>	A low value for an improvement on the roll could be reflective of economic times, not condition of the property. As indicated in the text, determination of reassessable new construction activity must be made on a case-by case basis.
57	27	9	Cal Tax (Doerr)	<p>Revise sentence: When extensive renovation or rehabilitation of a property (or portion of it) converts it into one that resembles a newly built property, the work is considered new construction and the county assessor is required to establish a new base year value.³⁶</p>	Not accepted— Language is consistent with Property Tax Rules 463 and 463.500 See Attachment D
58	28	24	Marin County Assessor (R. Benson)	<p>Comments: Line [28] 24 "New base year value of improvements" should be aligned with \$290,000 on line [30] 26. Line [31] 27 "New base year value of repaired home" should be aligned with \$410,000 on line [33] 29.</p>	Accepted

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
59	29 21	SBE Staff	Revise Example 3-10: A taxpayer purchased a 1,600 <u>2,000</u> square-foot house (4 bedrooms, 3 bathrooms) for \$400,000 <u>\$350,000</u> , with \$350,000 <u>\$250,000</u> allocated for improvement and \$50,000 <u>\$100,000</u> for land. There had been no regular repair or maintenance work on the home for over 15 years. The purchase price was lower than the average selling price of comparably sized homes and reflected the poor condition of the house. Subsequently, the taxpayer made the following repairs and replacements to the house:...	Accepted
60	29 21	Sacramento County Assessor's Office (Lewis, et al.)	Revise example: Land/improvement allocation in Example 3-10 seems a bit skewed to low side on land.	See Item #59
61	29 21	Fresno County Assessor's Office (Downum)	Comment: It appears that example 3-10 describing extensive renovation to deal with 15 years of neglect does not meet the provided definition for normal maintenance in that it was not provided on a regular, standard, or typical basis. Though the example states that extensive work was done, a base year revalue was not warranted it seems that conclusion would be in question if the example does not meet the definition.	See Item #59

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
62	29 21	Marin County Assessor (R. Benson)	<p>Comments: Re: example 3-10 (Cha. 3, p. [25] 29) which upgrades a "fixer" house that sold for less than comparable properties due to poor condition. Relying on the cost breakdown table of Assessor's Handbook 531, section 531.80, approximately 35% of the cost components of the improvement are replaced and considered non-assessable. Now consider that as of the date of the preparation and demolition of the components to be replaced the property is sold. Under the proposed example, none of the construction made after the sale would be assessable. How would this be different if someone purchased a new house at 65% complete and finished the remaining 35% portion them self? Would that also be nonassessable and wouldn't that create inequity with someone purchasing a new house at 100% complete? Clearly, this house suffered from "abnormal maintenance and repair". Maintenance and repairs had been deferred for 15 years. This was reflected in a lower than average purchase price. Now that all of the physical defects have been corrected the improvement value should be increased to reflect this new construction. Although the example states that the renovation did not bring the house to substantially equivalent to new the nature of the work sure sounds like its substantially equivalent to new. Substantially equivalent to new doesn't necessarily mean new. It implies something less than new. Otherwise just use "equal to new" without any qualifiers. Nowhere in the example does the appraiser arrive at an opinion of value of a new comparable structure which could be used as a measuring stick to judge if the subject structure is substantially equivalent to new. The handbook itself requires that this be done in its discussion of what is "substantially equivalent to new" on page 6 and 7. The discussion following Table 3-2 on page [25] 27 also leads the reader to the conclusion that appraisal judgment comes into play when there is a combination of activities that individually are not new construction but when done collectively could become new construction. Additionally, this examples conclusion is in direct conflict with the rationale and logic of example 6-3.</p>	<p>New construction to cure physical deterioration may or may not constitute reassessable new construction. It must be determined on a case-by-case basis.</p> <p>Example 6-3 on page 72 deals with property sold in a contaminated condition. It is not analogous to a property suffering from physical deterioration.</p>

NO.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
63	30	2	<p>Marin County Assessor (R. Benson)</p> <p>Revise paragraph: Although extensive <u>Extensive</u> work was done on the house, the majority while some of the work was maintenance as it merely replaced old and deteriorated items with new ones of like kind <u>the work was not regular, standard and typical</u>. The taxpayer did not add any redesigned features to the house, nor did he improve it to the point that it was the substantial equivalent of a new home. No reappraisal of the base year value would be warranted. <u>As stated on pages 6 and 25, when replacements are as extensive, extreme, or in combination as to make an improvement (or a portion thereof) like substantially equivalent to new, then the work is considered assessable new construction. As discussed on page 7 this determination and measurement requires an appraisal of the improvement immediately before and after the new construction to estimate the value added, along with an estimate of the value of a comparable new improvement to determine if the value of the improvement after new construction is substantially equivalent to the value of a comparable new improvement. Accordingly, an analogous value test may be made to an improvement or a portion thereof. Establishing guidelines for determining when a value is substantially equivalent to new require both appraisal judgment and evaluation on a case-by-case basis, however, as a general guideline a value that is substantially equivalent to new is one which is at least 80% of the value of a comparable new improvement or a portion thereof.</u></p>	Not accepted— See Attachment B
64	30	7	<p>SBE Staff</p> <p>Add example: <u>Example 3-11</u></p> <p><u>A taxpayer purchased a 2,000 square-foot house (4 bedrooms, 3 bathrooms) for \$175,000, with \$75,000 allocated for improvement and \$100,000 for land. The house had been in a foreclosure state for several years and had been severely vandalized. The bathroom fixtures, kitchen countertops and sink, HVAC system, and light fixtures throughout the house had been removed. The flooring and walls were soiled, and the roof was in poor condition. The yards and fencing had not been maintained. Subsequently, the taxpayer did the following:</u></p> <ul style="list-style-type: none"> • <u>Installed new bathroom fixtures in all three bathrooms.</u> • <u>Installed new kitchen countertops, kitchen sink, and appliances.</u> • <u>Installed a new HVAC system and replaced the ducts throughout the house.</u> • <u>Installed new light fixtures in the kitchen, dining room, hallways, and bathrooms.</u> • <u>Replaced the old wood shingle roof (no change to the pitch) with new composition shingles. The gutters and downspouts were also replaced.</u> • <u>Replaced the soiled carpeting and painted the walls throughout the house.</u> • <u>Replaced the lawns in the front and backyards and planted new trees and flowers.</u> • <u>Replaced the old deteriorated fence with new redwood fencing.</u> 	Accepted

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
64 Cont				<ul style="list-style-type: none"> • <u>No work was done on the foundation and no square footage was added.</u> <p><u>The extensive work that was done on the house was composed of both assessable new construction and nonassessable repairs and replacements. Installation of those items that were not in the house at the time of purchase, and therefore were not included in the purchase price and subsequent base year value, would be considered assessable new construction. Replacement of the unmaintained and worn items may be considered maintenance and repair. However, the facts in each instance should be decided on a case-by-case basis to determine whether or not the new construction activity transforms the improvement (or a portion) into a state that is substantially equivalent to new.</u></p>	
65	30 31	32 1	SBE Staff	<p>Add sentence and example: <u>Generally, the replacement of a roof cover by another roof cover is considered normal maintenance and is not assessable as new construction. However, if the roof structure is redesigned to accept another roof cover, then that new roof structure is considered new construction.</u></p> <p><u>Example 3-12</u></p> <p><u>A home built in the early 1950's has a flat roof that is in good condition. The owner decides to change the roof line of the home by adding new framing (rafters, trusses, ceiling joists, etc.) that results in a roof line with a pitch to it. The new roof has composition shingles similar to the original flat roof.</u></p> <p><u>The work that was done in constructing the new roof would be considered new construction. It has converted the "portion of" the structure that consists of the roof to a state that is substantially equivalent to new. The assessor must determine what value, if any, the new roof adds to the house. The costs associated with this type of new construction could exceed the value actually added.</u></p>	Accepted
66	31	28	SBE Staff	<p>Add section: <u>ESCAPED NEW CONSTRUCTION</u></p> <p><u>An escape assessment is a retroactive assessment intended to rectify an omission or error that caused taxable property to be underassessed or not assessed at all. In most cases, once such an omission or error occurs, the property escapes assessment each year thereafter until the underassessment/nonassessment is discovered and corrected. If property that has undergone new construction escapes assessment, the assessor is required to value the property upon discovery for the appropriate valuation date,⁴¹ enroll the appropriate value on the roll being prepared, and process any necessary corrections escape assessments for prior years within the statute of limitations.⁴²</u></p> <p><u>When changing or establishing the base year value for newly constructed property that has escaped assessment, it should be recognized that this will not necessarily result in a change in the taxable or assessed value of the property. For example, even</u></p>	Accepted

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION																		
66 Cont			<p><u>though an addition to property comes to light several years after the new construction was completed and resulted in a slight increase in the base year value of the property in the year of the new construction, overall declines in value of the property in subsequent years may mean that while the property now has a higher factored base year value, no changes in the assessed value in later years are necessary since the property was assessed at its appropriate lower market value. This illustrates that the correction of a base year value is not the same thing as a change in taxable or assessed value.</u></p> <p><u>Example 3-13</u></p> <p><u>A single-family home located in Atlas County contained 1,800 square feet of living area when it was originally built in 2007. In August 2009, the owner completed construction of a family room addition which consisted of 400 square feet. The owner acquired all appropriate permits; however, the assessor's office did not discover the new construction until March 2012. The assessor must process a supplemental assessment for the 2009 event date, issue assessments for 2010 and 2011, and enroll the proper value for the 2012 lien date. Since the assessor was unable to find comparable market data, he decided the cost approach was the best method to value the new construction.</u></p> <p><u>An inspection of the property indicated that the family room addition was completed using the same design, construction type, and quality as the construction of the original residence. By using Assessors' Handbook Section 531, <i>Residential Building Costs</i> (AH 531), the assessor correctly determined the market value of the addition as of the August 2009 completion date. The quality classification is determined to be a D-7-C. Atlas County has a location adjustment factor of 1.40 for the cost tables contained in AH 531.</u></p> <table><tr><td><u>Square Footage of Original Living Area</u></td><td><u>1,800</u></td></tr><tr><td><u>Square Footage of the Addition</u></td><td><u>400</u></td></tr><tr><td><u>Total Square Footage</u></td><td><u>2,200</u></td></tr><tr><td> <u>2009 AH 531 Cost Factor for 2,200 sq. ft. D-7-C</u></td><td><u>\$102.14</u></td></tr><tr><td><u>Location Adjustment for Atlas County</u></td><td><u>x 1.40</u></td></tr><tr><td><u>Indicated Cost Per Square Foot</u></td><td><u>\$143.00</u></td></tr><tr><td> <u>Concluded Cost of the Addition</u></td><td><u>\$143.00</u></td></tr><tr><td></td><td><u>x 400</u></td></tr><tr><td></td><td><u>\$57,200</u></td></tr></table>	<u>Square Footage of Original Living Area</u>	<u>1,800</u>	<u>Square Footage of the Addition</u>	<u>400</u>	<u>Total Square Footage</u>	<u>2,200</u>	 <u>2009 AH 531 Cost Factor for 2,200 sq. ft. D-7-C</u>	<u>\$102.14</u>	<u>Location Adjustment for Atlas County</u>	<u>x 1.40</u>	<u>Indicated Cost Per Square Foot</u>	<u>\$143.00</u>	 <u>Concluded Cost of the Addition</u>	<u>\$143.00</u>		<u>x 400</u>		<u>\$57,200</u>	
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NO.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
66 Cont			<p>► <u>A supplemental assessment for \$57,200 should be processed for the August 2009 event date.</u>⁴³</p> <p><u>In January 2010, the property had declined in value due to the economic downturn in the single-family residential market. The assessor processed a decline-in-value assessment (Proposition 8) and reduced the property's value by 8 percent. This decline in value should also be reflected in the escape assessment for 2010.</u></p> <p>► <u>An escape assessment for \$52,624 should be processed for January 2010 (\$57,200 – 8%).</u></p> <p><u>In January 2011, the property had further declined in value. The assessor processed a decline-in-value assessment (Proposition 8) and reduced the property's value by an additional 7 percent. This decline in value should also be reflected in the escape assessment for 2011.</u></p> <p>► <u>An escape assessment for \$48,940 should be processed for January 2011 (\$52,624 – 7%).</u></p> <p><u>In January 2012, the property had stabilized and the assessor made no further adjustments to the property's value.</u></p> <p>► <u>For the January 2012 lien date, the assessor must enroll the value of the entire 2,200 square foot house.</u></p> <p>⁴¹ <u>Section 531.</u></p> <p>⁴² <u>Section 532.</u></p> <p>⁴³ <u>Section 75.11 provides the statute of limitations for supplemental assessments.</u></p>	

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
67	33 19	SBE Staff	<p>Revise section: Under section 51, an assessor is required to annually enroll the lower of a property's factored base year value or its full cash value as of the lien date, as defined in section 110. Section 110 provides that <i>full cash value</i> is:</p> <p style="padding-left: 40px;">...the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other...." (Emphasis added.)</p> <p>Even though certain additions to existing buildings may be excluded from the definition of new construction, such exclusions do not extend through a subsequent reassessment prompted by a change in ownership of real property. When a property with excluded new construction sells, the excluded new construction becomes assessable. Since an estimate of full cash value for decline in value purposes is made as if the property was exposed for sale, the full cash value should not be reduced by the value of any excluded new construction.</p> <p style="text-align: center;">DECLINE IN VALUE</p> <p><u>Section 51 requires that the assessor annually enroll the lesser of a property's factored base year value or its full cash value (market value) as of the lien date. <i>Full cash value</i> is defined as the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other.⁴⁴ Since an estimate of full cash value for decline-in-value purposes is made as if the property was exposed for sale, the full cash value should not be reduced by the value of any excluded new construction⁴⁵ under the premise that a property being made available for sale would include all segments of the appraisal unit. This analysis is for comparison purposes only when determining the factored base year value or the current market value in order for the assessor to enroll the lesser value on the lien date. This analysis does not affect the factored base year value nor the status of any previously excluded new construction.</u></p> <p>For example, if a property owner installs a qualified active solar energy system, the system is excluded from assessment as new construction.⁴⁶ If the taxpayer were to subsequently sell the property to another person or entity, the system would become assessable and the value would be reflected in the selling price. Accordingly, the value of the active solar energy system that was excluded from the meaning of new construction upon completion should be included in an estimate of full cash value made for a decline-in-value review.</p> <p>⁴⁴ <u>Section 110.</u></p> <p>⁴⁵ <u>See Chapter 5 for a discussion of the various exclusions from new construction.</u></p>	Accepted

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
68	34	20	Marin County Assessor (R. Benson)	<p>Revise sentence: The value of the newly constructed property must be enrolled, and appropriate notices ⁴⁷ must be sent to the property owner to advise that the base year value of the property has been changed <u>of the new base year value.</u></p> <p>SBE Rewrite: The value of the newly constructed property must be enrolled, and appropriate notices ⁴⁷ must be sent to the property owner to advise <u>the taxpayer of the new base year value established for the new construction</u> that the base year value of the property has been changed.</p>	Accepted—See SBE rewrite
69	40	3	Marin County Assessor (R. Benson)	<p>Comment: Land was acquired in 2001 so it should be a 2002 base year.</p>	Not accepted—Land purchased in May 2010 would be added to and assessed on the supplemental assessment roll in 2010. The 2011 lien date value would be the <u>factored</u> base year value.
70	40	12-25	Marin County Assessor (R. Benson)	<p>Revise sentence: The <u>adjusted base year value values</u> of land and improvements for 2005 was enrolled <u>was calculated</u> as follows:</p> <p>Comments: This example uses erroneous inflation factors. Lines 14, 18 and 20 are misaligned. The inflation factoring should be as follows: L 5/2001 200,000 x 1.08101 = 216,202 L 1/2002 41,000 x 1.05982 = 43,452 Total Land - 259,654 I 4/2004 450,000 x 1.02 = 459,000 Total 2005 Adjusted Base Year Value 718,654</p>	Not accepted—See comment for Item #69
71	40	23	Los Angeles County Assessor's Office (Hough)	<p>Revise sentence: The assessor enrolled a base year value of \$705,400 <u>\$705,412</u> for the property as of the date of completion of the new construction, April 1, 2004. The allocation was \$450,000 for improvements and \$255,400 <u>\$255,412</u> for land.</p> <p>Comment: When a trended base year value is involved, the assessor may not round off values. New construction values are routinely rounded, as in this example, but the trended land value of \$255,412 must be maintained.</p>	Accepted

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
72	41	2	SBE Staff	<p>Revise section: Article XIII A, section 2 of the California Constitution provides for certain exclusions from the definition of <i>new construction</i>. These exclusions, which are implemented by various statutory provisions, permanently preclude the assessment of the qualifying new construction until there is a change in ownership.⁵³ The property tax incentive for the following exclusions is in the form of a <i>new construction exclusion</i>. It is not an exemption. Therefore, the new construction of a qualifying property will not result in either an increase or a decrease in the assessment of the existing property. Some of the exclusions are automatic, while</p> <p>Since an estimate of full cash value for decline-in-value purposes is made as if the property was exposed for sale, the full cash value should not be reduced by the value of any excluded new construction⁵⁴ <u>under the premise that a property being made available for sale would include all segments of the appraisal unit. This analysis is for comparison purposes only when determining the factored base year value or the current market value in order for the county assessor to enroll the lesser value on the lien date. This analysis does not affect the factored base year value nor the status of any previously excluded new construction.</u></p> <p style="text-align: center;"><u>UNDERGROUND STORAGE TANKS</u></p> <p>In 1999, legislation⁵⁵ created a new construction exclusion for underground....</p> <p>⁵³Section 73 provides that the initial purchaser of a newly constructed building with an active solar energy system will qualify for a solar new construction exclusion.</p> <p>⁵⁴See Chapter 3 for a discussion of decline in value.</p> <p>⁵⁵Senate Bill 933, Stats. 1999, ch 352.</p>	Accepted
73	44	14	SBE Staff	<p>Revise sentence: ▪The damage or destruction may be the result of a disaster that subsequently caused the Governor to proclaim a <u>may be the result of a Governor proclaimed</u> state of emergency, or it may be the result of other types of disaster.⁶³</p>	Accepted
74	45	10	SBE Staff	<p>Revise sentence: ▪ The damage must be the result of a disaster that subsequently caused the Governor to proclaim a <u>must be the result of a Governor proclaimed</u> state of emergency.⁶⁸</p>	Accepted
75	45	24	SBE Staff	<p>Revise sentence:</p> <p>1. If <u>the destroyed manufactured home was</u> subject to local property tax, the its taxable value equal to the taxable value of the destroyed manufactured home at the time of its destruction; or</p> <p>2. If <u>the destroyed manufactured home was</u> subject to the vehicle licensing fee, the taxable value that would produce the same amount of property tax as the vehicle license and registration fees due on the destroyed home for the year prior to its destruction.</p>	Accepted

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
76	47	7	Marin County Assessor (R. Benson)	Revise sentence: The rebuilt structure will have a two base year values.	Accepted
77	50	24	Sacramento County Assessor's Office (Lewis, et al.)	Add sentence: ...any increase in property taxes. <u>The new construction exclusion is available only to the property owner who completes the construction; it is not passed along to subsequent owners.</u>	Accepted
78	51	Fn 82	Marin County Assessor (R. Benson)	Revise footnote: ⁸² California Constitution, article XIII <u>XIII A</u> , section 2(c)(3); section 74.3(a).	Accepted
79	53	23	Sacramento County Assessor's Office (Lewis, et al.)	Add section heading and new paragraph: <u>CHANGE IN OWNERSHIP</u> <u>When a property that has been granted a disabled access exclusion undergoes a change in ownership, the entire property, including the previously excluded new construction, is reappraised at its current full cash value as of the date of transfer. The new construction exclusion is available to the property owner who completed the construction; it is not passed along to subsequent owners.</u> The benefits under section 74.3 are in the form of an exclusion from new construction, not an exemption from new construction. Therefore, once granted the exclusion remains in effect until the property changes ownership.	Accepted
80	56	20	SBE Staff	Revise section: ...This exclusion will <u>is scheduled to</u> remain in effect only until January 1, 2017. ⁹⁸ Active solar systems that qualify for exclusion prior to January 1, 2017 will continue to be excluded until there is a subsequent change in ownership. ⁹⁹ Newly constructed active solar energy systems are often sold or transferred in sale-leaseback arrangements, special partnership structures, or other transactions to purchasers that may also be eligible for federal tax benefits. Newly constructed active solar energy systems financed using sale leaseback and similar arrangements that require the solar energy system itself, but not the real estate, to be sold or transferred to a third party, will continue to receive the property tax exclusion.⁹⁹ ⁹⁸ Section 73(i). For purposes of supplemental assessment, this section applies only to qualifying construction or additions completed on or after January 1, 1999. ⁹⁹ Stats. 2011, ch.3 (Assembly Bill 1x15) in effect June 28, 2011. ⁹⁹ See the <i>Guidelines for Active Solar Energy System New Construction Exclusion</i> for detailed discussion of the new construction exclusion for solar energy systems.	Accepted
81	56	20	SolarCity (Ranchod)	Delete sentence and footnote: This exclusion will remain in effect only until January 1, 2017. ⁹⁸ ⁹⁸ Section 73(i). For purposes of supplemental assessment, this section applies only to qualifying construction or additions completed on or after January 1, 1999.	Not accepted—See Item #80

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
82	56	23	SolarCity (Ranchod)	Revise sentence: Newly constructed active solar energy systems are often sold or transferred in sale-leaseback arrangements, special partnership structures, or other transactions to purchasers <u>or transferees</u> that may also be eligible for federal tax benefits.	Not Accepted—See Item #80
83	56	26	SolarCity (Ranchod)	Revise sentence: <u>A newly</u> Newly constructed active solar energy systems <u>system</u> transferred in a financed—using sale-leaseback, to a partnership, limited liability company (LLC) or corporation or in a and similar arrangements <u>arrangement</u> that require <u>requires</u> the solar energy system itself, but not the real estate, to be sold or transferred to a third party, <u>or that requires the transfer of an interest in a single-member LLC,</u> will continue to receive the property tax exclusion. ⁹⁹ <u>Any subsequent transfer or sale will extinguish the exclusion, In addition, the assignment of rights under a construction is not a change in ownership.</u>	Not Accepted—See Item #80
84	57	24	Sacramento County Assessor's Office (Lewis, et al.)	Revise sentence: In addition, pipes, ducts, furnaces, and hot water heaters that are used exclusively to carry energy derived from solar energy are also excluded from new assessment as new construction.	Accepted

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
85	59 20	SBE Staff	<p>Revise section: BUILDERS' EXCLUSION</p> <p><u>When real property is being constructed, the assessor must determine the fair market value of the portion of the property that is under construction at each lien date. When the construction is complete, the assessor determines the fair market value of the newly constructed property. Section 71 states:</u></p> <p><u>...New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of property which is newly constructed shall be reappraised at its full value.</u></p> <p><u>For construction in progress on the lien date, generally it is the builder who is responsible for the property taxes. Section 75.12 implements the exclusion from supplemental assessment commonly known as the <i>builders' exclusion</i>. The exclusion allows builders to avoid reassessment of their inventories The exclusion is accomplished by deferring and defers the date of assessment of new construction, where either: The exclusion is automatic and no notice is required if all three of the following conditions are met:</u>¹⁰⁴</p> <ol style="list-style-type: none"> 1. A builder has notified the assessor, prior to or within 30 days of the commencement of construction, that he or she does not intend to occupy or use the property; or 2. The property meets all of the following criteria applicable to the development of residential subdivisions: <ol style="list-style-type: none"> <u>1. The property is subdivided into five or more parcels in accordance with the Subdivision Map Act, or any successor to that law;</u> <u>2. The map describing the parcels has been recorded; and</u> <u>3. Zoning regulations applicable to the parcels or building permits for the parcels require that, except for parcels dedicated for public use, single-family residences will be constructed on the parcels.</u> <p><u>Alternatively, a builder can notify the assessor, prior to or within 30 days of the commencement of construction, that he or she does not intend to occupy or use the property.</u>¹⁰⁵ <u>Failure to qualify for this exclusion either automatically or by providing notice to the assessor will result in a reassessment of the property on the date the construction is completed. Therefore, within 30 days of commencement of construction, the builder/owner must determine if he or she is required to give notice to the assessor or if the automatic exclusion applies.</u></p> <p>For the builders' exclusion, new construction....</p> <p>¹⁰⁴Section 75.12(a)(1)(B).</p> <p>¹⁰⁵Section 75.12(a)(1)(A).</p>	Accepted

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
86	62	1	SBE Staff	Revise sentence: • As of the date of transfer <u>sale</u> of the original property, the claimant or the claimant's spouse is at least 55 years of age or severely and permanently disabled. Comment: Section 69.5(a) requires the original property be sold.	Accepted
87	64	5	SBE Staff	Correct typo: A claim form must be filed with <u>within</u> three years of the purchase or completion of new construction of the replacement dwelling, ¹¹⁵ with certain exceptions. ¹¹⁶	Accepted
88	67	28	Marin County Assessor (R. Benson)	Revise sentence: • The replacement property must be located in <u>a</u> county that has adopted an ordinance accepting such transfers. ¹³³	Accepted
89	68	7	SBE Staff	Revise sentences: • One hundred five percent of the amount of the full cash value of the original property <u>immediately prior to the disaster</u> if the replacement property is purchased or newly constructed within the first year following the date of the damage or destruction of the original property. • One hundred ten percent of the amount of the full cash value of the original property <u>immediately prior to the disaster</u> if the replacement property is purchased or newly constructed within the second year following the date of the damage or destruction of the original property. • One hundred fifteen percent of the amount of the full cash value of the original property <u>immediately prior to the disaster</u> if the replacement property is purchased or newly constructed within the third year following the date of the damage or destruction of the original property.	Accepted
90	68	31	SBE Staff	Add sentence: ...environmental problems on qualified contaminated property. <u>A <i>qualified contaminated property</i> is real property that has been rendered uninhabitable or unusable by the presence or remediation of environmental problems and is located on a site that a state or federal agency has designated as a toxic or environmental hazard or as an environmental clean-up site.</u> ¹³⁷ ¹³⁷ California Constitution, article XIII A, section 2(i)(2).	Accepted
91	72	10	Marin County Assessor (R. Benson)	Comment: The fill in this example was not an addition it was replacing contaminated fill that had been removed.	Comment reflects current text
92	72	21	Marin County Assessor (R. Benson)	Revise sentence: Since the new owner had knowledge of the contamination at the time of purchase <u>and it sold at a discount</u> , the new constructions exclusions are not available. ¹⁵³	Accepted
93	72	Fn 153	Marin County Assessor (R. Benson)	Revise footnote: ¹⁵³ Section 2(i)(2)(A) of article XIII <u>XIII A</u> of the California Constitution.	Accepted

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
94	73	4	SBE Staff	<p>Revise section and add footnote citation: Many hazardous waste cleanup projects are long-term operations. Some projects take years or decades of continuous cleanup and rehabilitation work. Moreover, in many <u>some</u> cases a complete rehabilitation of the property may never be achieved. The difficulty for an assessor is determining the date of completion of cleanup and rehabilitation work.</p> <p>The date of completion of new construction <u>for assessment purposes</u> for a hazardous waste cleanup project is the date on which the property is deemed operational and functional.¹⁵⁶ A remedy becomes <i>operational and functional</i> <u>the earliest of</u> either:</p> <ul style="list-style-type: none"> • One year after construction is completed; or • When the remedy is determined concurrently by the California Environmental Protection Agency and Department of Toxic Substances Control to be functioning properly and is performing as designed, whichever is earlier. <p>Therefore, communicating with the lead agency about a project and its progress will be necessary to establish whether a remedial action has been deemed operational and functional.</p> <p>¹⁵⁶ Rule 463.500. 40 Code of Federal Regulations, section 300.435, subdivision (f)(2).</p>	Accepted
95	73	Fn 157	SBE Staff	<p>Add footnote citation: Once a project is operational functional, and it has entered the <i>operation and maintenance</i>¹⁵⁷ phase, any further additions or alterations....</p> <p>¹⁵⁷ <u>Health and Safety Code section 25318.5. Operation and maintenance means those activities initiated or continued at a hazardous substance release site following completion of a response action that are deemed necessary by the department or regional board in order to protect public health or safety or the environment.</u></p>	Accepted
96	80	Fn 172	Marin County Assessor (R. Benson)	<p>Revise footnote: ¹⁷² Section 3(<u>m</u>), article XIII of the California Constitution; section 224.</p>	Accepted

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
97	88 Glossary	Marin County Assessor (R. Benson)	<p>Comments: "Normal maintenance keeps a property in condition to perform efficiently the service for which it is intended and ensures that a property will experience an economic life of typical duration. "Normal Maintenance The action of continuing, carrying on, preserving, or retaining something; it is the work of keeping something in proper condition. Maintenance performed on real property is normal when it is regular, standard, and typical. Normal maintenance keeps a property in condition to perform efficiently the service for which it is intended and ensures that a property will experience an economic life of typical duration." Normal maintenance keeps a property in condition to perform efficiently the service for which it is intended and ensures that a property will experience an economic life of typical duration."</p> <p>As above, part of the "normal maintenance" definition is that which ensures an economic life of typical duration. By deduction, that which extends the economic life of typical duration would not be "normal maintenance." Property Tax Rule 463 originally included in the definition of "newly constructed" alterations of existing improvements which resulted in an extension of the economic life of the improvement (ref. PTR 463(a)). AB 1488 of 1979 purposely removed from the rule references to "economic life" because the reference was thought to be too inclusive. Therefore, the current draft should not re-introduce the reference in view of the history. Pursuant to the Task Force on property Tax Administration the "economic life" test was replaced with "major rehabilitation."</p> <p>SBE Rewrite: <i>Normal Maintenance:</i> The action of continuing, carrying on, preserving, or retaining something; it is the work of keeping something in proper condition. Maintenance performed on real property is normal when it is regular, standard, and typical. Normal maintenance keeps a property in condition to perform efficiently the service for which it is intended and ensures that a property will experience an economic life of typical duration.</p>	<p>Accepted—See SBE Rewrite</p> <p>See also Item #15</p>

General Comments from Marin County Assessor:

In general, and as stated in an October 29, 1979 report by the staff of the Revenue and Taxation Committee, "There are also more unresolved controversies regarding new construction than any other part of the new law..." Now we have an opportunity to address some of the difficult questions that remain after 29 years. In this context, taxpayers and property tax practitioners alike can benefit with the addition of clearer and more descriptive instructions for the assessment of new construction. In this regard, some suggestions are offered below for consideration in finding ways to more effectively qualify new construction. It is most important to recognize that one of the purposes of this handbook is to reduce ambiguity and increase clarity and uniformity.

The "Draft" references the words "substantially equivalent" in numerous locations. Page 6, lines 26-29 state, "Whether or not new construction transforms an improvement or fixture (or a portion) into a state that is substantially equivalent to new (into a state where its utility is comparable to new) is a factual determination that must be made on a case-by-case basis." And, Rule 463 employs the words "substantially equivalent" in multiple references. RTC 70(2)(b) defines a "major rehabilitation" of an improvement or fixture as "any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture." AB 1488 of 1979 created the language for this statute thus defining "major rehabilitation." The June 28, 1979 legislative history and analysis of this bill, as delivered to the Governor for signature, specifically expressed the intent of the framers by stating "AB 1488 defines the term "new construction" and specifies what would constitute major rehabilitation for purposes of evaluating an improvement. Only those portions which exceed the equivalent value construction would be reassessed," (*emphasis added*). It is important to note that the legislative intent and focus of the "substantial equivalent test" related specifically to a value test.

Further to assist in understanding the nature of the "substantially equivalent" test one can look to the following additional references to find a reasonable quantitative standards to help clarify the "substantial equivalent" test:

California Constitution, Art. XIII A;

Sec. 2(a) The "full cash value" means the county assessor's valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975–76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property that is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster... (*emphasis added*).

Sec. (e) (1) Notwithstanding any other provision of this section, the Legislature shall provide that the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

Sec.(f) For the purposes of subdivision (e):

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property that it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster (*emphasis added*).

Revenue and Taxation Code section 70(c). Notwithstanding the provisions of subdivisions (a) and (b), where real property has been damaged or destroyed by misfortune or calamity, "newly constructed" and "new construction" does not mean any timely reconstruction of the real property,

or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction. Any reconstruction of real property, or portion thereof, that is not substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion that exceeds substantially equivalent reconstruction shall have a new base year value determined pursuant to Section 110.1. (emphasis added).

Revenue and Taxation Code section 69(c)(2). Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property which it replaces.

(A) Property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning.

(B) Both the size and utility of property are interrelated and associated with value. Property is similar in size and utility only to the extent that the replacement property is, or is intended to be, used in the same manner as the property substantially damaged or destroyed and its full cash value does not exceed 120 percent of the full cash value of the property substantially damaged or destroyed. (emphasis added).

Revenue and Taxation Code sections 68 (eminent domain), 69 (disaster relief), and 74.7 (environmental contamination) all rely on a 120% value test as a consideration for evaluating comparability and whether or not additional value due to new construction is assessable.

It is therefore a reasonable conclusion to establish a standard that new construction to an improvement (or portion) by rehabilitation, renovation, or modernization, converts an improvement or fixture to the substantial equivalent of a new improvement or fixture when the full cash value of the improvement after such construction is at least 80 percent of the full cash value of the new improvement or portion thereof.

A conclusion different than that described above may lead to inequitable treatment if there are conflicting definitions or interpretations of assessable new construction.

Assessable new construction is better referenced in terms of market value rather than specific kinds of construction. Having a discrete market value test avoids: [1] having to guess at specific construction items not listed in Property Tax Rule 463(b)(4); [2] the un-reasonable results demonstrated in the value comparison examples above and below, and [3] the prospect of inequitable treatment of value attributable to new construction between the different Revenue and Taxation Code sections: 68, 69, 74.7. A discrete market value test harmonizes the criteria in the different Revenue and Taxation Code sections instead of placing reliance on subjective criteria and arbitrary construction items.

Where there is a conflict between this handbook and a prior annotation, letter to assessor, special topic survey, or other BOE publication, the content of the new handbook should clarify if it supersedes a conflicting BOE publication, document or opinion.

Response to General Comments from Marin County Assessor by BOE Staff:

Note: The following references to "line numbers" refer to the line numbers of the text in Attachment A of this document.

Page 17, Lines 3-8: BOE staff completely agree with the statements made by the Revenue and Taxation Committee in 1979 relative to the "controversies regarding new construction" and with the comments from the Marin County Assessor regarding a need "to reduce ambiguity and increase clarity and uniformity" with respect to new construction activities under Proposition 13. Generally, there are two types of activities that, for property taxation purposes, require action by county assessors: (1) when property changes ownership or changes control and (2) when property is newly constructed. The members of the 1979 Task Force, whose job was to make recommendations regarding implementation procedures for Proposition 13, clearly knew that dealing with newly constructed property would be the more difficult task. Simplistically, when property changes ownership/control, the county assessor must determine the fair market value of the property as of the event date. And, again, simplistically, as long as the sale is an open-market transaction, the purchase price is considered the fair market value. Until the recent decline in the economy, the assessor had relatively few decisions regarding changes in ownership. However, for newly constructed property there is no bright-line test. Determination of whether certain construction activity constitutes a reassessable event is 100% appraisal judgment.

Page 17, Lines 9-17: The new construction provisions of Proposition 13 were implemented by the Legislature with Revenue and Taxation Code section 70 and by the BOE with the adoption of Property Tax Rules 463 and 463.5.¹ Both the statute and the rules were scrutinized during their adoption processes. Likewise, since the adoption of the statute and the rules, there have been dozens of court cases that have evaluated the language of each. As indicated by the Marin County Assessor, both use the term "substantially equivalent" and neither provide a straight-forward definition. Both the statute and the rules make it clear that determination of whether new construction activity requires reappraisal by the county assessor is determined on a case-by-case basis using appraisal judgment. Neither the statute nor the rules contains any reference to a new construction determination based on value.

Page 17, Lines 21-34, and Page 18, 1-12: Each of the references provided by the Marin County Assessor refers to circumstances regarding a calamity or disaster that has occurred that require new construction activity to replace property that was damaged or destroyed. While new construction activity will occur following a disaster, the analysis made by the county assessor is for a base year value transfer determination, not determination of whether new construction activity qualifies as a reassessable event. The disaster relief provisions were implemented to protect taxpayers following a calamity or disaster that were not caused by the taxpayer, e.g., an earthquake or a fire. Provided that the taxpayer reconstructs his/her property in substantially the same size, utility, and function as the damaged or destroyed property, the taxpayer is eligible to keep the base year value of the destroyed property. If the assessor determines that a portion of the new construction is beyond that which was damaged or destroyed, only that portion beyond the previous property's characteristics is considered new construction that should be assessed. Again, this is primarily a base year value transfer determination not a determination of whether new construction activity should be assessed. A comparison between the disaster relief base year value transfer provisions and the provisions for determining when new construction activity qualifies for assessment is not an equivalent comparison.

Page 17, Lines 18-22: Additionally, the Marin County Assessor provides Revenue and Taxation Code sections 68 (eminent domain), 69 (disaster relief), and 74.7 (environmental contamination) as statutes to validate a "value" test for newly constructed property. Sections 68, 69, and 74.7 are all base year value transfer determinations. The reference in these three sections to a "120% value test" pertains to the purchase of a replacement property. This 120% value comparison test is made in order for an assessor to determine whether the base year value can be transferred to the replacement property.

¹ Renumbered Rule 463.500.
September 2012

Page 18, Lines 13-24: The Marin County Assessor concludes that a standard should be established using an 80% value test when analyzing newly constructed property for a determination as to whether the activity constitutes reassessable new construction. BOE staff disagrees. There are no provisions in either the statutes or the Property Tax Rules to allow for such a "value" test. We are aware, however, that some counties do use an 80% test in conjunction with the analysis of newly constructed property. Their tests are not based on the value of the new construction, but are based on the type and amount of construction activity. For example, if a taxpayer "modernizes" or "rehabilitates" a kitchen wherein 80% of the kitchen is now substantially equivalent to new, the new construction activity would be determined to be reassessable new construction. Conversely, if 80% of the new construction activity to the kitchen was determined to be normal maintenance and repair, the new construction would not be assessable.

A value determination test for newly constructed property ignores the specific provisions of the Property Tax Rules that enumerate the exclusions for new construction, such as normal maintenance and repair. Additionally, Rule 463(b)(5) specifically provides a comparison test for the rehabilitation, renovation, or modernization of fixtures: "Substantial equivalency shall be ascertained by comparing the productive capacity, normally expressed in units per hour, of the rehabilitated fixtures to its original productive capacity." Under the Marin County proposal, replacement of a roof, for example, that may cost \$25,000, would be considered assessable new construction and the taxpayer would be denied the exclusion afforded under the "normal maintenance and repair" exclusion provisions in the Property Tax Rules.

General Comments from California Taxpayers Association (Cal Tax):

Assessors' Handbook 410, *Assessment of Newly Constructed Properties*, has many good features. Unfortunately, it is fatally flawed because it is inconsistent with Revenue and Taxation Code Section 70. The California Constitution prohibits the board is prohibited [sic] from refusing to enforce the statute (see Article III, Section 3.5).

A brief history: Article XIII A of the California Constitution, adopted overwhelmingly by voters in 1978 (and just as popular with voters today according to a Field Poll released this month [September 2011]), provides that property is to be assessed at the appraised value for the year in which [sic] is "newly constructed."

A task force was formed in 1978 to develop legislation to implement Article XIII A. During task force discussions, there was a fundamental disagreement between most members of the task force and the staff of the State Board of Equalization over the proposed statutory definition of "newly constructed."

The task force recommended the following statutory language for the statutory language defining new construction.

Chapter 3 Newly Constructed

Section 70. Definition of Newly Constructed and New Construction.

- a) "Newly constructed" and "new construction" means:
 - 1. Any addition to real property, whether land or improvements (including fixtures), since the last lien date; and
 - 2. Any alteration of land or of any improvement (including fixtures) since the last lien date which constitutes a major rehabilitation thereof or which converts the property to a different use.
- b) Any rehabilitation, renovation or modernization which converts an improvement or fixture to the substantial equivalent of a new improvement or fixture is a major rehabilitation of such improvement or fixture.
- c) Notwithstanding the provisions of subdivisions (a) and (b), where real property has been damaged or destroyed by misfortune or calamity, "newly constructed" and "new construction" does not mean any timely reconstruction of the real property, or portion thereof where the property after reconstruction is substantially equivalent to the property prior to damage or destruction. Any reconstruction of real property, or portion thereof, which is not substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion which exceeds substantially equivalent reconstruction shall have a new base year value pursuant to Section 50.

The Legislature adopted the task force's recommendation and rejected the view of the staff of the State Board of Equalization.

You will note that Section 70(a) – (c), defining new construction, is the same today as the language recommended by the task force.

Proposed Assessor Handbook 410 is misinterpreting subdivision (b) by placing "or portion thereof" into the subdivision when it is clearly not there. Subdivision (c) contains the phrase "or portion thereof," but it only is applicable to damaged property.

Therefore, based on the statutory language in Section 70, for any rehabilitation or a structure – other than a damaged one – to be reassessable the rehabilitation needs to make the entire structure the substantial equivalent of a new structure, not just a portion thereof.

- 1 Unfortunately, the draft of AH 410 is replete with instances of the use of "or portion thereof" to apply to rehabilitation of non-damaged property.

Response to General Comments from Cal Tax by BOE Staff:

Note: The following reference to "line numbers" refer to the line numbers of the text in Attachment C of this document.

Page 32, Line 36-37: Cal Tax indicates that proposed AH 410 is misinterpreting Revenue and Taxation Code section 70(b). AH 410 does not interpret section 70; Property Tax Rules 463 and 463.500 interpret section 70. The language in AH 410 regarding "or portion thereof" is completely in harmony with the provisions of Rules 463 and 463.500.

In 1998, industry attempted to counter the language adopted by the Board in Rules 463 and 463.5² by refuting the text of AH 502. The question discussed in Issue Paper 98-028 was: "Does new construction include a portion of an existing structure or other improvement for the purpose of establishing a new base year value for that portion. (Is the language in rules 463 and 463.5 in conflict with section 70?)"

The Board answered the question by reconfirming the language in Rules 463 and 463.5 and by adopting the proposed text in AH 502 regarding newly constructed property concerning "a portion thereof." The following is an excerpt from Issue Paper 98-028.

The issue at hand concerns whether or not there can be new construction as to a portion of an existing structure or other improvement. As a typical example, if a kitchen in a building is renovated to a state "substantially equivalent to new" (a definition of one form of new construction), should this bring about a reassessment as to the portion thereof of the building (i.e., the kitchen)? The answer is 'yes.' In general, under rule 463, there can be new construction as to a portion thereof, providing the construction is not for normal maintenance and repair. However, under the alternative view held by industry, this would not be new construction; rather, new construction can only apply to an entire building or other improvement.

The main regulatory and statutory provisions concerning this issue are found in rules 463 and 463.5 and section 70. These provisions are discussed below.

Rule 463

As originally enacted in July 1978, subdivision (b) of the original rule 463 stated:

"When real property, *or a portion thereof*, is newly constructed after the 1975 lien date, the assessor shall ascertain the full value of such 'newly constructed property' as of the date of completion. This will establish a new base year value for only that portion of the real property which is newly constructed...." [Emphasis added.]

In August 1979 the Board revised rule 463 to conform to section 70, the statute addressing new construction enacted in July 1979. The revised rule not only retained most of the language above but also added further references to newly constructed property, improvements, fixtures, or portions thereof in other subdivisions (a), (b), and (e); the expression "a portion thereof" is used widely in revised rule 463. In addition, when the Board considered new construction in the context of supplemental assessment in 1985, it expressly incorporated into rule 463.5(c) the definition of new construction contained in rule 463, and added additional examples of portions of property constituting new construction.

² Renumber Rule 463.500.
September 2012

Section 70

The enacted statutory provisions in section 70 (AB 1488, Chapter 242, Statutes of 1979) addressed primarily the qualitative aspects of the definition of new construction—that is, the type of activity that qualifies as new construction (i.e., addition or alteration, renovation or rehabilitation bringing about a state "substantially equivalent to new"). The focus was to implement, in section 70 and an amended rule 463, in accord with recommendations contained in the report of the Task Force on Property Tax Administration and the follow-up report of the Assembly Revenue and Taxation Committee, a definition of new construction based on a "major rehabilitation" test rather than an "economic life" test as had been in original rule 463.

The "value added" concept in assessing new construction in progress was also an issue at this time. Under this concept, only the additional value resulting from the portion of new construction since the prior assessment could be added as construction in progress from lien date to lien date or at the completion of construction. County assessors proposed that the entire property should be reassessed at the completion of construction, not just the value added from the prior assessment. This view was rejected by the drafters of new section 70.

In practically all other matters relating to new construction, the Legislature has retained the language in original rule 463 although it has had ample opportunity to modify this language and the concepts embodied in it through statutes. It has chosen not to do so.

Simultaneous Application of Section 70 and Rule 463

The fact that the Legislature left most of the definition and regulation of new construction to the Board, in rule 463, rather than including it in section 70, allowed the Board expanded authority for regulation and simultaneously avoided problems of inconsistency with the statute. Within such a broad statutory framework, there was no criticism of rule 463 on the basis of its inconsistency with section 70. Indeed, those who disagreed with various provisions of the rule have advocated that section 70 be amended to make the statute more consistent with the Board rule.

For example, immediately after section 70 and revised rule 463 were adopted, the Assembly Revenue and Taxation Committee report mentioned above expressed disagreement with some provisions in revised rule 463, but never indicated that the rule contradicted section 70. To the contrary, the report states:

In 1978-79 the definition of new construction was left to Board of Equalization regulations (BOE Rule 463). In AB 1488, acting on Task Force recommendations, a statutory definition was enacted for 1979-80 and thereafter. However, perhaps more so than in any other assessment area, what constitutes new construction is very largely determined by the Board rule, which, as amended in response to AB 1488, expands the existing statutory language significantly. There are more unresolved controversies regarding new construction than any other part of the new law..." (*Implementation of Proposition 13*, Volume 1, "Property Tax Assessment," Assembly Revenue and Taxation Committee, October 29, 1979, page 16.)

In discussing one of these "unresolved controversies" related to the phrase, (in rule 463(b)(3)) "or any portion thereof," the report indicated that the Legislature should solve the problem in the future by amending section 70:

And 463(b)(1) is quite specific that 'changing an existing improvement so as to add horizontally or vertically to its square footage or to incorporate an additional fixture' constitutes a 'substantial addition.' This language may result in minor kitchen or bathroom remodeling being counted as new construction, because it 'converts the improvement *or any portion thereof* to the substantial equivalent of new structure or portion thereof *or changes the way in which the portion of the structure that had been altered is used.*' (emphasis added, 463(b)(3)). This latter point could result in reappraisal of a utility closet being converted into a bathroom, because of the change in use. In either case, such a restrictive

interpretation runs counter to Task Force intent and the discussions in legislative committees, and may be an area for future statutory revisions. (p. 32.)

In fact, no further statutory revisions were ever proposed relating to the phrase "a portion thereof." Rather, Board staff issued many Letters to Assessors and legal opinions containing detailed examples showing how there might be new construction as to a portion thereof. These opinions provide a consistent interpretation, since 1978, that there can be new construction as to a portion thereof. For example, Letter to Assessors (LTA) No. 79/204 (November 30, 1979) addresses the specific problem raised in the staff report of the Assembly Revenue and Taxation Committee quoted above relating to the proper application of "portion thereof." The LTA first quotes subdivision (b)(3) of rule 463, which defines new construction of improvements, and then provides an interpretation:

"(3) Any physical alteration of any improvement which converts the improvement *or any portion thereof* to the substantial equivalent of a new structure or portion thereof or changes the way in which the portion of the structure that has been altered is used." [Emphasis added.]

Note that the definition covers *portions of improvements, as well as whole structures*, and that only one of the qualifications (change in use or new equivalency) need be present. [Emphasis added.]

Examples of alterations to improvements that would qualify as new construction are:

- a. The complete renovation of an older structure or portion thereof
- b. The conversion of a portion of a warehouse to office space
- c. The conversion of a garage to living area
- d. The conversion of an existing room to a bathroom
- e. The conversion of a single-family residence to a duplex

Excluded would be those alterations where there is no change in use and the alteration did not result in new equivalency for any portion of the improvements. Examples are:

- a. Maintenance and repairs
- b. Redecorating
- c. Replacement of existing kitchen or bathroom cabinets
- d. Replacement of home air conditioner

In addition to this and other LTAs, several staff legal opinions have applied the term "a portion thereof" to various types of newly constructed property. These opinions support and explain the language stated in rule 463 that "when real property, or a portion thereof, is newly constructed after the 1975 lien date, the assessor shall ascertain the value of such 'newly constructed property' as of the date of completion."

The Board's Property Tax Rules, Letters To Assessors, and legal opinions are not the only writings that use the concept of a "portion of " a property relevant to property taxation. For example, the Legislature uses the concept in its revisions to Revenue and Taxation Code section 51:

...(b) If the real property was damaged or destroyed by disaster, misfortune, or calamity and the board of supervisors of the county in which the real property is located has not adopted an ordinance pursuant to Section 170, or any *portion of* the real property has been removed by voluntary action by the taxpayer, the taxable value of the property shall be the sum of the following:...

In applying this subdivision, the base year value of the subject real property does not include that *portion of* the previous base year value of that property that was attributable to any *portion of* the property that has been destroyed or removed.... [Emphasis added.]

Finally, in *Pope v. State Board of Equalization* (1983) 146 Cal.App.3d 1132, 1137-1139, the court found:

...In any event, that portion of the Assembly Revenue and Taxation Committee Report dated October 29, 1979, treating with the meaning of the term "date of completion," contains the following comment: "Rule 463(e) defines this time as the date property or portion thereof is available for use, subject to various considerations." Elsewhere in the report, it is noted that "what constitutes new construction is very largely determined by the Board rule, which as amended in response to AB 1488 expands the existing statutory language significantly." In light of these observations, we cannot assume that the Legislature was either unaware of, or dissatisfied with, the standard adopted by the Board....

The proposed language in AH 410 is consistent with adopted, long-standing Board regulations and other Board-provided guidance.